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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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JUDITH N.,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO  
COUNTY,

Respondent;

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES et al.,

Real Parties in Interest.

C040206

(Super. Ct. Nos.  
JD215555, JD215556)

Judith N. (petitioner), the mother of Jonathan and Adam, seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate orders of respondent juvenile court terminating reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26 (further undesignated section references are to this code). Petitioner also requests

a stay of proceedings in respondent court. We shall deny the petition, rendering the request for stay moot.

Eight-month-old Jonathan and 21-month-old Adam were removed from petitioner's custody in August 2000, due to physical abuse of Adam by petitioner, who had a history of mental health problems. Respondent juvenile court ordered the minors placed in foster care. The court also directed the Department of Health and Human Services (DHHS) to provide petitioner with reunification services.

An August 2000 psychological evaluation by Lorin Frank concluded that the then 20-year-old petitioner was "the type of person who is going to experience repeated psychological breakdowns throughout her adult life, which will essentially prevent her from being able to provide stable, consistent and nurturing care for her two young children."

Petitioner's case plan required her to participate in counseling, attend parenting classes, and complete a psychological evaluation. In a July 2001 report, DHHS stated that, although petitioner had made "a lot of effort to resolve her mental health problems" and to gain the ability to provide adequate care for Jonathan and Adam, she had "met with only some success in this endeavor thus far." Thereafter, in his December 2001 report, the social worker recommended termination of petitioner's reunification services and the scheduling of a section 366.26 hearing.

At the December 2001, 18-month review hearing, social worker Paul Scott testified that petitioner had difficulty

supervising Jonathan and Adam during her visits with them. According to Scott, "on a few occasions at least" petitioner grabbed Adam and put him down "very hard" on the floor. Visitation supervisors also had reported to Scott that petitioner had displayed "inappropriate anger" at both Jonathan and Adam during visits. Scott told respondent juvenile court that an evaluation had concluded petitioner was unable to do multiple tasks with Jonathan and Adam. The foster mothers of Adam and Jonathan told the court that both minors exhibited various behavioral difficulties before and after their visits with petitioner.

Petitioner's therapist, Joyce Bright, testified that petitioner had made significant improvement in her overall functioning. The therapist believed petitioner would have a difficult time parenting both minors. However, the therapist was optimistic about the prospects for success if only one minor were returned to petitioner's custody. Bright acknowledged she was aware of an evaluation that had concluded petitioner did not understand the appropriate developmental levels for a very young child.

Petitioner testified she wanted both Jonathan and Adam returned to her custody. Petitioner acknowledged that she continued to require therapy. Petitioner agreed that Adam had special needs and presented various difficulties.

Adam's therapist testified that petitioner had acquired the skills necessary to employ parenting techniques when coached. However, it was unclear to the therapist whether petitioner had

the ability to employ those techniques without coaching. Moreover, according to the therapist, even after receiving assistance, petitioner lacked knowledge of what was developmentally appropriate for very young children. In sum, Adam's therapist did not believe that petitioner had demonstrated an ability to meet Adam's needs.

Petitioner contends respondent court abused its discretion in finding that DHHS offered reasonable services to her and made active efforts to provide her with remedial services. According to petitioner, DHHS failed to ensure that she had therapy with Jonathan. She also claims that unsupervised visits with Jonathan, which DHHS did not offer, would have been appropriate.

At the 12-month permanency hearing, "[t]he court shall . . . determine whether reasonable services have been provided or offered to the parent . . . that were designed to aid the parent . . . to overcome the problems that led to the initial removal and continued custody of the child." (§ 366.21, subd. (f).) The court shall continue the matter for up to six months if it determines "that reasonable services have not been provided to the parent." (§ 366.21, subd. (g)(1).) "The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent . . . ." (§ 366.21, subd. (g)(1).) "When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from

the physical custody of his or her parent or legal guardian."  
(§ 366.22, subd. (a).)

The adequacy of reunification services is judged according to the circumstances of each case. (*In re Edward C.* (1981) 126 Cal.App.3d 193, 205.) Services must be tailored "to fit the unique challenges suffered by individual families" and must, for example, accommodate the special needs of disabled parents. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792.) "The effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success." (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777; *In re Elizabeth R.*, *supra*, at p. 1790.) "[T]he record should show that the supervising agency . . . made *reasonable* efforts to assist the parents in areas where compliance proved difficult (such as . . . *offering more intensive rehabilitation services where others have failed*)." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414, second italics added.) "Only where there is clear and convincing evidence [that reasonable services have been] provided or offered . . . may the court order a section 366.26 hearing. [Citation.]" (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165.)

The juvenile court's finding that reasonable services were provided must be upheld if supported by substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

In this case, the record reflects that, contrary to petitioner's claim, DHHS made a referral for her therapy with Jonathan, and Jonathan was present at petitioner's therapy

sessions. Adam's therapist testified that Jonathan was involved in the therapy. Moreover, petitioner testified she had participated in therapy with Jonathan. The lack of a report by the therapist who conducted the therapy and the fact Jonathan had not participated in another therapy group with which petitioner was involved do not constitute a showing that DHHS failed to provide petitioner with reasonable services. This is particularly true since the record also shows petitioner at one time had refused an offer of a separate program of therapy with Jonathan.

Substantial evidence supports the juvenile court's finding that petitioner received reasonable reunification services.

(*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.)

The juvenile court denied petitioner's request for unsupervised visitation. The record supports that ruling. Although petitioner attended visits regularly, and Jonathan and Adam enjoyed them, there was evidence that petitioner interacted with the minors only "marginally well," and that on occasion she had difficulties handling behavioral issues during the visits. There was no error in the denial of unsupervised visitation.

Petitioner also claims respondent court also abused its discretion in finding that the return of Jonathan to her custody would create a substantial risk of detriment to Jonathan's well-being. According to petitioner, there was evidence suggesting she could provide adequately for Jonathan, who did not present the special difficulties displayed by Adam.

At the review hearing, the juvenile court must order a child returned to parental custody "unless [it] finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).)

The juvenile court's order must be upheld if it is supported by substantial evidence. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625.) In making this determination, we resolve all evidentiary conflicts in favor of the prevailing party, recognizing that issues of fact and credibility are questions for the trier of fact. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 16; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)

Ample evidence supports the juvenile court's determination that returning Jonathan to petitioner's care would have created a substantial risk of detriment to the minor. As the court found, Jonathan continued to exhibit behavioral problems in connection with his visits with petitioner. Moreover, from an examination of petitioner's testimony, it is apparent she had difficulty addressing Jonathan's behavior: "Every now and then, yeah, such as Jonathan, the last visit I had with him -- first time I ever gone through with him hitting, smacking and seriously doing it. Other times he's thinking he's playing with me. I tell him to play by himself, but this time he was upset. He smacked me. He tried to bite me. He head butted me and kicked me. That was upsetting to me. [¶] Other times are

whenever they're just upset with whatever is going on and having a bad day, and kind of inflicts on me at the same time. I don't like that."

The evidence in this case suggests petitioner had failed to comprehend and was unable to apply what she had been taught in counseling. The result was that, despite efforts made by petitioner, the juvenile court could conclude she had not improved sufficiently in her parenting abilities to resume custody even of one minor.

Petitioner's final claim is that respondent juvenile court abused its discretion in disallowing the admission of expert testimony at the review hearing. According to petitioner, the court's ruling violated the Indian Child Welfare Act (hereafter the Act) (25 U.S.C. § 1901 et seq.) and denied her due process of law.

The Act requires expert testimony where a foster care placement is being considered. Title 25 United States Code section 1912(e) states: "No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

Here, at the disposition hearing the juvenile court ordered the minors placed into foster care. The court's order at the review hearing merely continued that placement. Unlike her argument at the review hearing, which was based on her proffered



witness being a cultural expert, petitioner asserts here, without citing any authority for the proposition, that title 25 United States Code section 1912(e) applies to *all* hearings where continued foster care placement is an issue, rather than merely when the initial placement is made at the disposition hearing. Absent any authority, the claim need not be considered. (Cf. *People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.) Moreover, having found no authority for petitioner's claim, we reject it.<sup>1</sup>

We also reject petitioner's due process claim. Although petitioner has the right to present evidence on her behalf, the juvenile court is empowered to control its proceedings. (§ 350, subd. (a)(1); *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751.) As part of that control, the court may make relevancy determinations. Here, the court ruled that the proffered testimony of the Indian expert, which consisted of her recommendation as to reunification of the minors with petitioner, was irrelevant to the issues before the court. The record supports that conclusion. There was no violation of due process.

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<sup>1</sup> The record contains a report prepared by an Indian expert submitted in March 2001, after the disposition hearing in this case. We need not consider whether, as petitioner suggests, the Act was violated if no such evidence was before the court at disposition. In any event, as the disposition hearing was concluded in August 2000, it is too late to raise that claim now.

DISPOSITION

The petition is denied. The request for stay is denied as moot.

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SIMS, Acting P.J.

We concur:

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MORRISON, J.

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CALLAHAN, J.